UNITED STATES DEPARTMENT OF AGRICULTURE
Consumer and Marketing Service
Grain Division, Seed Branch
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# QUESTIONS AND ANSWERS ABOUT THE FEDERAL SEED ACT

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These 53 questions and answers were prepared on the basis of questions that have been asked of the Seed Branch by seedsmen and others since 1963. They are intended to supplement the 113 questions and answers in publications issued in October 1960 (AMS-415) and July 1961 (AMS-415, supplement 1) entitled "Questions and Answers about the Federal Seed Act."*

1. Q: What is wild white clover?

   A: The term "wild" is a type designation used with three white clover varieties -- Kent, New York, and New Zealand -- all of which are low growing.

2. Q: Is molybdenum applied to seed considered a seed treatment?

   A: Seed given an application of molybdenum is not "treated" as the term "treated" is defined in section 101(a)(24) of the Federal Seed Act.

3. Q: Is the term "Supersweet" a type designation or part of the names of certain varieties of sweet corn?

   A: Our information indicates that the first two named hybrids bearing the $sh_2$ (shrunken-2) factor in place of the su (sugary) gene are named Illinichief and Illinigold. The term "Supersweet" is not a part of these variety names, but is descriptive of the $sh_2$ character when present in any line or variety. Under these circumstances, it is construed to be a "type" designation under the Federal Seed Act and should be so designated when used in advertising or labeling subject to the Act.

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*NOTE: The following corrections should be made in previous publications as the questions and answers are no longer correct: (a) Questions and Answers About the Federal Seed Act for 1959 to 1960: Delete question and answer Nos. 8 and 39. (b) Questions and Answers About the Federal Seed Act, dated October 1960: Delete question and answer No. 31.

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4. Q: Is seed shipped interstate for storage subject to the Federal Seed Act?

A: Whether seed is sold or offered for sale within the destination State is immaterial. Seed shipped in interstate commerce for storage is subject to the Act. The Act covers seed transported or delivered for transportation in interstate commerce. It also covers seed sold or offered for sale for interstate shipment by others.

5. Q: Is it proper to use the term "blend" to indicate that seed is a "mixture" under the Federal Seed Act?

A: The word "mixture" is not required in labeling seed under the Act. The term "blend" is not defined in the Act or its rules and regulations. However, as a noun "blend" is defined in the dictionary as "a thorough mixture." In view of this definition, if it is used to describe a mixture as defined under the Act, we would not construe its use to be misleading. There are several State seed laws, however, that require the word "mixed" or "mixture" to be shown on labels of mixed seed.

6. Q: Is there any requirement under the Federal Seed Act for coloring treated seed?

A: No, but a ruling by the Food and Drug Administration of the U. S. Department of Health, Education, and Welfare indicates that on and after December 31, 1964, FDA will regard as adulterated any interstate shipment of the food seeds wheat, corn, oats, rye, barley, and sorghum bearing a poisonous treatment in excess of a recognized tolerance or treatment for which no tolerance or exemption from tolerance is recognized -- unless such seeds have been adequately denatured by a suitable color to prevent their subsequent inadvertent use as food or feed for animals.

7. Q: If "above-standard" vegetable seed in packets is labeled with a germination percentage but not with a date of test, is such labeling in violation of the Federal Seed Act?

A: No, a truthful germination percentage is construed to be "additional information that is not misleading" and the date of test is not required.

8. Q: Is the use of a growth stimulant on seed considered to be a seed treatment?

A: No, the seed cannot be legally represented as "treated seed" under the Federal Seed Act in view of the definition of "treated seed" under the Act. The term "treated" means given an application

of a substance or subjected to a process designed to reduce, control, or repel disease organisms, insects, or other pests which attack seeds or seedlings growing therefrom.

9. Q: Can the statement "Canadian No. 1" be associated with the name of a kind of seed without identifying it as a Canadian grade designation?

A: No, association of this statement with a kind name without identifying it as a grade designation is considered misleading and, therefore, in violation of section 201(d) of the Federal Seed Act.

10. Q: Can treated seed be labeled to show the brand or trademark instead of the name of the treatment substance?

A: The name of the treatment substance is required in the treatment statement. This does not mean that the brand or trademark name cannot be used in the required statement following the required name or elsewhere on the label.

11. Q: Are hybrids produced with the same alleged parentage automatically considered to produce the same variety?

A: Under the Federal Seed Act, pedigree is not the basis for determining whether a variety is new and distinctive and entitled to a new variety name. Growing tests on sorghum-sudangrass hybrids reveal that several hybrids with supposedly the same parentage produced distinctly different plants. Varietal status under the Act is not determined by pedigree but depends on the distinguishing characteristics of the plants produced.

12. Q: Can the variety name "Europe" be used on alfalfa produced in the United States since this is the name of the variety assigned by the European breeder?

A: No, use of the term "Europe" on alfalfa produced in the United States may be misconstrued to be an origin designation and, therefore, would be misleading. A similar term, such as "Europa," on the same variety used on seed grown and sold in this country would lessen the possibility that the origin of the seed would be construed to be European when it is not.

13. Q: Can the terms "forage sorghum" and "grain sorghum" be used as synonyms of the kind name "sorghum" when properly used on these types of sorghum?

A: Yes, we now permit this under section 201.34(b) of the rules and regulations. For many years, we insisted that the terms "forage" and "grain" were type designations and must be identified as

such in labeling and advertising under the Federal Seed Act. Some States, however, do not permit type labeling. The seedsman is thus caught between two fires and the use of these terms, which are beneficial to consumers, seemed to be not permitted. We believe it is advantageous to the consumer to be given this additional information and, therefore, have taken this new position.

14. Q: Can different dealers use similar package designs and similar wording on their packages, including the same lot number, without violating the Federal Seed Act?

A: Intent of the Act is to require truthful labeling as to the contents. The similarity of package design and the duplication of a lot number by different firms is not regarded as a violation of the Act.

15. Q: Are repellents considered within the definition of treated seed in the Federal Seed Act?

A: Yes, repellents are considered to be within the definition of "treated" in the Act, and their commonly accepted coined, chemical, or abbreviated chemical names are required to be shown in the labeling.

16. Q: Can certified seed be removed from its original container for repackaging and still be represented as certified seed?

A: No, not unless the certified seed is repackaged in compliance with the rules and regulations of a seed-certifying agency and unless certified seed labels issued for the seed by the certifying agency are attached to the new containers.

17. Q: Can the letters "B.T." be associated with a variety name in advertising to indicate that the seed is "blue tag" certified seed?

A: Association of the letters "B.T." with the variety name is considered misleading and therefore in violation of section 201(d) of the Act, because the letters "B.T." may be misinterpreted by the ordinary consumer to be a part of the variety name. The letters "B.T." may be associated with the kind and variety name in a manner that clearly indicates that they are not a part of the kind or variety name -- for example, "Penncross creeping bentgrass (B.T.)."

18. Q: Is "California Blackeye No. 5" or "Blackeye No. 5" the name of a variety of cowpea under the Federal Seed Act?

A: "California Blackeye No. 5" is a variety name determined in accordance with section 201.34 of the regulations under the Act. "Blackeye No. 5" is not the complete name.

19. Q: Is the display of the trademark symbol with a variety name in advertising or labeling in compliance with the Federal Seed Act?

A: The display of the trademark symbol with a variety name in advertising subject to the Federal Seed Act is considered misleading. This practice is therefore in violation of section 205 of the Act, because it may create the erroneous impression that variety names may be appropriated to the exclusive use of a single person and are eligible for registration as trademarks by the U.S. Patent Office. For the same reason, the display of the trademark symbol with a variety name in labeling subject to the Act is considered misleading and therefore in violation of section 201(d).

20. Q: Would a sample from a portion of the lot remaining on hand in a warehouse be a satisfactory file sample required to be kept as part of the complete record under the Federal Seed Act?

A: A sample representing each lot of seed shipped in interstate commerce is required to be kept as a part of the complete record of the interstate shipper. A sample from a portion of the lot remaining on hand in the warehouse would not be satisfactory, because it would not represent the entire lot but only a portion.

21. Q: Data processing produces different lot numbers in invoicing of seed. Would it be illegal to show a slightly different lot number on an invoice than that shown on labels attached to the bags of the lot of seed shipped in interstate commerce? For example, on seed labels a lot number 300-1AB may be used; while, on the invoice the lot number 300-1-1AB might be used.

A: We do not object to such a procedure under the Federal Seed Act, provided the seedsman notifies the seed control officials in each State to receive shipments how the lot number on the invoice will vary from the lot number on the labels for the same lot of seed. This prevents confusion in identifying the seed lot with the invoice sent to the buyer.

22. Q: Are the white and purple colors for labels used in seed certification for foundation seed and registered seed the exclusive property of seed certification agencies or can a seed company use the same colored labels?

A: In our opinion, the use of colors alone are not automatically understood by the general public to mean a particular generation of certified seed. Therefore, any color or multicolor label can be used for labeling any generation of certified seed or non-certified seed insofar as the Federal Seed Act is concerned.

23. Q: Is Poa glaucantha considered a crop seed or a weed seed under the Federal Seed Act?

A: Because Poa glaucantha is classified as a crop seed in the rules and regulations under the Act, it must be classified as a crop seed when occurring in other seed such as Canada bluegrass, provided it is not recognized as a weed seed in the State into which the seed is shipped.

24. Q: Would Poa palustris, fowl bluegrass -- when occurring incidentally in other kinds of seed -- be considered a weed seed or a crop seed?

A: Fowl bluegrass when found occurring incidentally in other kinds of seed is considered a weed seed unless the State into which the seed is shipped considers fowl bluegrass to be a crop seed. If fowl bluegrass is labeled as a component of a mixture, the classification of it under the Federal Seed Act would depend on the classification under the regulations of the State into which the seed is shipped. If sold as a single kind of seed, it would not be subject to the Act, since it is not named as an agricultural seed in the rules and regulations.

25. Q: Can the terms "verified" or "affirmed" be used in referring to seed labeled in interstate commerce?

A: In 1929 the U. S. Department of Agriculture filed with the Trademark Operations office of the Patent Office a letter indicating "verified" was used to identify a certain class of seed. Although the origin verification of alfalfa and red clover seed by USDA was discontinued in July 1965, the term "verified" can still be used in a misleading manner because of its long time use in the origin verification service. However, there have been certain uses of the term "verified" that have not been considered misleading. For example, (Blank) Seed Company advertises "(Blank)Verified Varieties of Seed." It is clearly stated what is being verified and who is doing the verifying. We have no knowledge of the word "affirmed" having a restricted meaning in connection with seed.

26. Q: Is imported seed ever subject to the interstate provisions of the Federal Seed Act before it has been officially released into the commerce of the United States?

A: Yes, this is the case when the seed moves in interstate commerce before official release of the seed; however, the requirements do not apply when the seed moves only to the premises of the importer.

27. Q: Is it permissible to label a sorghum-sudangrass hybrid to show the lines used in the cross?

A: We see no objection to such labeling so long as the information is not designated as the variety name. It is additional information which is not misleading and is therefore permissible under the Act.

28. Q: Is it necessary to identify a brand on the sides of a paper bag as well as on the front of the bag?

A: Because of the way bags are piled, we believe it may be misleading not to identify the brand on the side of the bags as well as on the front of the bags.

29. Q: What varieties of annual ryegrass have been recognized as not subject to the fluorescence test formulas set forth in the Federal Seed Act rules for seed testing for a determination as to kind?

A: The varieties Magnolia and Ariki have been so recognized.

30. Q: Is it possible for a seed company to have a commercial seed laboratory keep the file sample of lots of seed tested for the company to comply with the record keeping requirement of the Federal Seed Act?

A: It is permissible for a seed laboratory to keep an interstate shipper's file samples for him. The laboratory must keep the samples for the required period of time and must make them available upon request from a USDA representative. If they are not made available under this arrangement, the interstate shipper is held responsible. In this connection, the period of time that file samples must be kept is sometimes misunderstood. They cannot be discarded 1 year after being tested, but must be kept for 1 year after the entire lot of seed represented by the sample has been disposed of.

31. Q: Is a product consisting of soybean hulls and less than 5 percent of one kind of seed subject to the labeling requirements of the Federal Seed Act?

A: Although the name of the kind of seed need not be shown because it is present at a rate less than 5 percent of the whole, the product does contain some seed for planting purposes. Therefore, all the other information required to be on the label must be shown -- including the percentage of inert matter, name and address of the shipper, the lot number, percent of other crop seed, percent of weed seeds, and the name and rate of occurrence of noxious-weed seeds for the State into which the seed is shipped. The percent of germination and the date of test would not have to be on the label. This requirement, under provisions of the Federal Seed Act, applies only to those kinds of seed present in excess of 5 percent. Chances are, however, the seedsman would want to include this information with other information on the label.

32. Q: How may the term "pedigreed" be used in labeling or advertising seed under the Federal Seed Act?

A: This term has never been defined under the Act. It was included as a proposed definition under the Act at the time of its original passage in 1939, but was found to be so difficult to define that it was dropped from the proposals. At present, we are able to require that, when used, the term should be identified as a brand or grade to indicate that it is not a part of the kind or variety name. We do not feel that we can require more than this without a definition.

33. Q: Are Kentucky 31 and Alta different varieties of tall fescue?

A: We have always regarded Kentucky 31 and Alta as synonymous names of a variety of tall fescue, since we cannot distinguish between the seed or the plants of the two sources of this material grown under the same conditions.

34. Q: Are labels furnished to interstate customers for relabeling carryover seed considered subject to the Federal Seed Act?

A: Yes, such labels sent through the mail to relabel carryover seed on the premises of an interstate consignee may be considered advertising until placed on the bags. After attachment to the bags, they are considered to be labeling accompanying or pertaining to the interstate shipment of seed.

35. Q: Can the term "common" be used in labeling alfalfa seed?

A: The term "common" cannot be used as a variety designation under the Act, in order to comply with the recent amendment to the Act which requires that alfalfa seed be labeled as to variety or bear the statement "Variety Not Stated." A variety, including alfalfa, is differentiated from another variety of the same kind by such characteristics as growth, fruit, seed, etc. Common alfalfa cannot be so differentiated and therefore is not construed to be a variety. It may still be used as part of the name of a variety of seed, however.

36. Q: Is red clover seed labeled as "medium red clover" or "mammoth red clover" required under the new amendments to the Act to be labeled "Variety Not Stated"?

A: Since the terms "medium red clover" and "mammoth red clover" are listed in section 201.2(h) of the regulations as the names of kinds of seed, it is construed that only the kind name has been shown by the use of the terms "medium red clover" and "mammoth red clover" and, therefore -- in the absence of a variety name -- the term "Variety Not Stated" must be shown.

37. Q: Can part of the seed lot be treated and part of it remain untreated and still retain the same lot number?

A: If part of a lot of seed is treated and part is not treated, that part which is treated becomes a new lot. Likewise, if parts of a lot are treated with a different substance, each part becomes a different lot. Under the new regulations, records of treatments are required to be kept, including a file sample, on each lot consisting of or containing treated seed.

38. Q: Is it misleading to advertise seed for sale at $1.77 with a statement that it regularly sells for $2.77?

A: A statement "regular $2.77" would only be a false pricing statement if the product were not normally sold at that price or when there was obviously no market for such seed at that price. A statement "sale $1.77 - limited time," if truthful, would tend to make the statement of higher price not misleading.

39. Q: Is the term "velvet" used in describing a lawn grown from a mixture of grass seed containing a substantial amount of tall fescue or ryegrass seed considered to be misleading?

A: The term "velvet" is construed to be false and misleading when used to describe a lawn grown from a mixture containing substantial amounts of tall fescue or ryegrass seed.

40. Q: Can sweetclover seed be sold as sweetclover seed or must it be labeled "white sweetclover" or "yellow sweetclover"?

A: Recent changes in the regulations under the Federal Seed Act with respect to the name of the kind of seed "sweetclover" requires that sweetclover seed be labeled either "white sweetclover" or "yellow sweetclover" and, in the case of mixtures, the names "white sweetclover" and "yellow sweetclover" and the percentages of each.

41. Q: Is the shipment of seed grain from one State into another subject to the Federal Seed Act whether it is subject to the State seed laws of the State into which the grain is shipped or not?

A: Yes, the shipment of grain for seeding purposes from one State into another is subject to the Federal Seed Act whether it is subject to the State seed laws into which the seed is shipped or not.

42. Q: Are noxious-weed seeds in vegetable seed controlled under the Federal Seed Act?

A: Under the interstate provisions of the Act, it is not required that vegetable seed be labeled to show the name and rate of occurrence of noxious-weed seeds. However, any vegetable seed which is labeled "Noxious-Weed Seed - None" and contains weed seed considered noxious in the State into which the seed is shipped is construed to be falsely labeled and therefore in violation of the Act.

43. Q: Is the shipment of seed into States not yet requiring the statement "Variety - Not Stated" in violation of the Federal Seed Act?

A: The requirement of the Federal Seed Act on labeling as to variety is independent of the requirements of the State seed law. The State seed law may require the variety name to be stated. Therefore, even though the seed is labeled "Variety - Not Stated" to comply with the Federal Seed Act, it could not be sold in the State into which it is shipped until it is labeled as to variety. In those cases in which a State law does not require the variety to be stated, the State will probably not object to the statement "Variety - Not Stated" as required under the Federal Seed Act on certain kinds of seed designated by the Secretary.

44. Q: If you have a blend of varieties of a kind of seed listed in section 201.10 of the regulations under the Act as the kind that should be labeled to show the words "Variety - Not Stated," should this seed be labeled "Variety - Not Stated"?

A: A blend or mixture of varieties being sold without the variety names should be labeled to show the words "Varieties - Not Stated." The singular form, "Variety - Not Stated," may imply that only one variety is present, whereas, such is not the case in varietal blends.

45. Q: Is hard fescue, Festuca ovina, var. duriuscula, considered a fine-textured grass under the Federal Seed Act?

A: Hard fescue, Festuca ovina, var. duriuscula, is not listed in section 201.12a of the rules and regulations under the Act as one of the kinds of fine-textured grasses to be recognized in labeling lawn grass seed. Therefore, labeling hard fescue to be a fine-textured grass is in violation of the Act.

46. Q: Is it permissible to advertise sorghum almum as "sorghum grass"?

A: The name of the kind of seed recognized in section 201.2(h) of the Federal Seed Act is sorghum almum. The term "sorghum grass" is not recognized as a synonym and its use is construed to be a violation of the regulations under the Federal Seed Act. In addition, sorghum almum is considered a noxious-weed seed in many States. Therefore, its shipment into those States for seeding purposes is construed to be in violation of the Federal Seed Act.

47. Q: Can the term "Variety Unknown Unless Stated" be printed on labels of seed shipped in interstate commerce?

A: The term "Variety Unknown Unless Stated" cannot be used as a substitute for "Variety - Not Stated" under the Federal Seed Act. Recent amendments to the Act and regulations thereunder are very specific in requiring the use of the term "Variety - Not Stated." One purpose of this term is to inform the consumer that a brand name that may appear in labeling is not a variety name. The term "Variety Unknown Unless Stated" would not accomplish that purpose. For example, "XYZ Brand Alfalfa - Variety Unknown Unless Stated" could lead the consumer to believe that XYZ Brand was the variety name.

48. Q: Can tobacco seed devoid of germination be used as a filler with petunia seed without being labeled on the packet?

A: Tobacco seed -- even though devoid of germination -- when used as a filler with petunia seed and shipped in interstate commerce is required to be labeled in the same manner as any other agricultural seed under the Federal Seed Act.

49. Q: Is it in compliance with the Act to label bermudagrass grown in Arizona as "Arizona bermudagrass"?

A: The term "Arizona bermudagrass" is not in compliance with the Federal Seed Act. The kind name would still be "common bermudagrass." The kind name appearing in advertising and labeling subject to the Act would have to be confined to "common bermudagrass."

50. Q: Is the Norlea variety of perennial ryegrass properly represented as a "A Fine Quality Turf"?

A. Labeling of the Norlea variety of perennial ryegrass as "A Fine Quality Turf" is construed to be in violation of the rules and regulations under the Federal Seed Act as none of the ryegrasses are listed in the regulations as being "fine-textured."

51. Q: Can a treated seed statement on a label be left blank or can the word "none" be inserted when seed is not treated?

A: A treated seed statement on a label in which a space is left blank or in which the word "none" is inserted is considered misleading and not in compliance with the Federal Seed Act. The entire statement must be deleted and should not be labeled in this manner to indicate that the seed is not treated.

52. Q: is it permissible to label seed "Germination 90 Percent or Better" under the Federal Seed Act?

A: Phrases such as "Germination 90 Percent or Better" are considered not in compliance with the Act if the percentage of germination is required to be stated.

53. Q: What category of seed treatment is Difolatan, N-(tetrachloroethylthio)-cyclohexene dicarboximide?

A: This is a fungicide used for seed treatment. It is in that category of seed treatment which is not required to be labeled to show a skull and crossbones and the word "poison" in red lettering. The label is required to bear a caution statement substantially as follows: "Do not use for food, feed, or oil purposes." Difolatan is a proprietary name. The chemical name must be shown in the labeling. The proprietary name may be shown in a secondary position as additional information.

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